

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| GUIDECRAFT, INC.               | ) |                                |
|                                | ) |                                |
| Plaintiffs,                    | ) |                                |
|                                | ) |                                |
| v.                             | ) | Civil Action No. 2:18-cv-01097 |
|                                | ) |                                |
| GOPLUS CORP., a California     | ) | Electronically Served          |
| Corporation; COSTZON, INC., a  | ) |                                |
| California Corporation;        | ) |                                |
| COSTWAY.COM, INC.; and WEI WU, | ) |                                |
| an individual                  | ) |                                |
| Defendants.                    | ) |                                |

**DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S SECOND AMENDED  
COMPLAINT, OR IN THE ALTERNATIVE TRANSFER VENUE,  
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(2), (3), AND (6)**

Defendants GoPlus Corp., Costzon, Inc, Costway.com, Inc., and Wei Wu (collectively, “Defendants”) move this Court to dismiss the Second Amended Complaint filed against them by Plaintiff GuideCraft, Inc. (“Plaintiff”) pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6), stating as follows:

1. On December 20, 2018, Plaintiff filed its Second Amended Complaint alleging a variety of trademark, copyright, and Pennsylvania law causes of action. ECF No. 30.
2. Plaintiff manufactures and sells a variety of children’s step stools specifically designed to help in the kitchen. Plaintiff holds an alleged trademark for the name Kitchen Helper. Plaintiff alleges, with no supporting facts, that these stools and the mark are highly sought after and widely recognized.
3. Plaintiff contends Defendants have infringed on its trademark rights by using the Kitchen Helper mark. Plaintiff further alleges that Defendants have infringed on the trade dress of its Kitchen Helper line of stools by selling similar step-stools that enable children to help in the kitchen. Finally, despite acknowledging that it holds no registered copyrights for its stool designs,

Plaintiff alleges Defendants have infringed on this unregistered, but “copyrighted” stool designs.

4. In the complaint, the only allegations supporting this Pennsylvania Court’s exercise of personal jurisdiction over Defendants are the vague, unsupported statements that Defendants engage in business in the district. The Complaint does not allege *any* of the parties reside in or otherwise have specific, intentional contact with Pennsylvania.

5. Accordingly, Defendants request that:

- a. This case be dismissed because this Pennsylvania Court lacks personal jurisdiction over all of the Defendants and venue is not proper;
- b. This case alternatively be transferred to the Central District of California pursuant to 28 U.S.C. § 1404(a). The only connection to this District is Plaintiff’s counsel’s office. The balance of private and public factors demonstrate that litigation would more conveniently proceed in the Central District of California;
- c. The case be dismissed because Plaintiff’s complaint is a classic “shotgun pleading” in violation of Rule 8;
- d. The case be dismissed because Plaintiff’s group allegations lodged generally against all “Defendants” without attributing specific acts to any defendant fail to state an adequate claim putting Defendants on notice of their alleged misconduct;
- e. Counts One, Two, and Five be dismissed for failure to state a claim for trademark infringement and unfair competition given that Plaintiff’s asserted trademark is generic and therefore invalid;
- f. Plaintiff’s trade dress claim be dismissed because Plaintiff failed to plead the

requisite specificity to support a trade dress claim, failed to adequately plead non-functionality, and failed to adequately plead distinctiveness and secondary meaning;

g. Plaintiff's copyright claim be dismissed because Plaintiff does not hold the necessary copyright registration as a prerequisite to filing a copyright lawsuit; and

h. Plaintiff's tortious interference and dilution claims be dismissed because Plaintiff fails to sufficiently allege the required elements of the claims.

6. Pursuant to the Court's Standing Order regarding motion practice (ECF No. 6), Defendants state that they have all discussed the foregoing motion with Plaintiff and understand that Plaintiff disagrees with, and will oppose, the motion.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiff's Complaint in its entirety; or in the alternative, transfer the case to the Central District of California, and award Defendants such further relief as the Court deems just and appropriate.

January 10, 2019

Respectfully submitted,

/s/ Jenna C. Hutchinson

Jenna C. Hutchinson

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*Attorneys for Defendants*

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| COSTWAY.COM, INC.; and WEI WU, | ) |                                |
| an individual                  | ) |                                |
| Defendants.                    | ) |                                |

**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2019, the undersigned caused a true and correct copy of *Defendants' Joint Motion to Dismiss* to be electronically served upon all counsel of record.

Respectfully submitted,

/s/ Jenna C. Hutchinson  
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